

2020 No. 903

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Criminal Legal Aid (Remuneration) (Amendment)
Regulations 2020**

Made - - - - - *25th August 2020*

Laid before Parliament - - *27th August 2020*

Coming into force in accordance with regulation 1(2) and (3)

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 2(3) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force on 17th September 2020.

(3) Regulation 3 and regulation 6 come into force on 19th October 2020.

Amendment of the Criminal Legal Aid (Remuneration) Regulations 2013

2. The Criminal Legal Aid (Remuneration) Regulations 2013(b) are amended as follows.

Omission of regulation 10

3. Regulation 10 (cases sent for trial to the Crown Court) is omitted.

Amendment of Schedule 1

4.—(1) Schedule 1 (advocates' graduated fee scheme) is amended as follows.

(2) In paragraph 1(1) (interpretation), after the definition of "substitute advocate" insert—

““unused material” means material disclosed pursuant to the prosecutors' obligations in Part 1 of the Criminal Procedure and Investigations Act 1996(c), but does not include—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants”.

(a) 2012 c. 10.

(b) S.I. 2013/435. Relevant amending instruments are S.I. 2014/2422, 2015/325, 2015/882, 2015/1369, 2015/1678, 2016/313, 2018/220, 2018/1323.

(c) 1996 c. 25.

(3) For paragraph 7 (calculation of graduated fees in guilty pleas and cracked trials) substitute—

“Calculation of fees in guilty pleas and cracked trials

7. The amount of the fee for a single trial advocate representing one assisted person where the case is—

- (a) a guilty plea, is the fee specified in Table A following this paragraph;
- (b) a cracked trial, is the fee specified in Table A1 following this paragraph,

as appropriate to the offence with which the assisted person is charged, and the category of the trial advocate.”.

(4) Omit paragraph 8 (basic fees for guilty pleas and cracked trials) but not the tables that follow it.

(5) In Table A, which following the omission of paragraph 8 by virtue of paragraph (4) now follows regulation 7, in the heading, for “Basic fees where there is a guilty plea or where the trial cracks in the first third or the second third” substitute “Fee for a guilty plea”.

(6) After Table A insert—

“Table A1

Fee for a cracked trial

| <i>(1) Band of offence</i> | <i>Amount of fee for a cracked trial per category of trial advocate</i> | | |
|----------------------------|---|---------------------------|----------------------------|
| | <i>(2) Junior Alone or Led Junior</i> | <i>(3) Leading Junior</i> | <i>(4) Queen’s Counsel</i> |
| 1.1 | £8,585 | £12,880 | £17,170 |
| 1.2 | £4,295 | £6,445 | £8,590 |
| 1.3 | £2,575 | £3,865 | £5,150 |
| 1.4 | £2,145 | £3,220 | £4,290 |
| 2.1 | £8,585 | £12,880 | £17,170 |
| 2.2 | £2,575 | £3,865 | £5,150 |
| 3.1 | £3,535 | £5,305 | £7,070 |
| 3.2 | £2,020 | £3,030 | £4,040 |
| 3.3 | £1,200 | £1,800 | £2,400 |
| 3.4 | £850 | £1,275 | £1,700 |
| 3.5 | £750 | £1,125 | £1,500 |
| 4.1 | £2,020 | £3,030 | £4,040 |
| 4.2 | £1,565 | £2,350 | £3,130 |
| 4.3 | £1,515 | £2,275 | £3,030 |
| 5.1 | £1,900 | £2,850 | £3,800 |
| 5.2 | £1,415 | £2,125 | £2,830 |
| 5.3 | £1,010 | £1,515 | £2,020 |
| 6.1 | £8,485 | £12,730 | £16,970 |
| 6.2 | £7,700 | £11,550 | £15,400 |
| 6.3 | £2,855 | £4,285 | £5,710 |
| 6.4 | £1,010 | £1,515 | £2,020 |
| 6.5 | £810 | £1,215 | £1,620 |
| 7.1 | £1,415 | £2,125 | £2,830 |
| 7.2 | £810 | £1,215 | £1,620 |
| 7.3 | £760 | £1,140 | £1,520 |
| 8.1 | £1,210 | £1,815 | £2,420 |
| 9.1 | £5,860 | £8,790 | £11,720 |
| 9.2 | £4,040 | £6,060 | £8,080 |
| 9.3 | £3,030 | £4,545 | £6,060 |
| 9.4 | £2,650 | £3,975 | £5,300 |

| | | | |
|------|--------|--------|----------|
| 9.5 | £1,615 | £2,425 | £3,230 |
| 9.6 | £1,210 | £1,815 | £2,420 |
| 9.7 | £810 | £1,215 | £1,620 |
| 10.1 | £2,220 | £3,330 | £4,440 |
| 11.1 | £1,400 | £2,100 | £2,800 |
| 11.2 | £800 | £1,200 | £1,600 |
| 12.1 | £2,120 | £3,180 | £4,240 |
| 12.2 | £1,315 | £1,975 | £2,630 |
| 12.3 | £910 | £1,365 | £1,820 |
| 13.1 | £1,800 | £2,700 | £3,600 |
| 14.1 | £2,325 | £3,490 | £4,650 |
| 15.1 | £1,615 | £2,425 | £3,230 |
| 15.2 | £1,400 | £2,100 | £2,800 |
| 15.3 | £850 | £1,275 | £1,700 |
| 16.1 | £2,220 | £3,330 | £4,440 |
| 16.2 | £1,615 | £2,425 | £3,230 |
| 16.3 | £1,010 | £1,515 | £2,020 |
| 17.1 | £725 | £1,090 | £1,450”. |

(7) Omit Table B (basic fees where the trial cracks in the final third).

(8) In paragraph 11(2) (general provisions), for “paragraph 8” substitute “paragraph 7”.

(9) In paragraph 15(5) (fees for sentencing hearings), in the definition of “banded fee”, for “paragraph 8” substitute “paragraph 7”.

(10) In paragraph 17 (fees for special preparation)—

(a) before sub-paragraph (1)(b)(i) insert—

“(ai) in cases falling within bands 2.1 and 2.2 (terrorism offences), 750;

(bi) in cases falling within bands 3.1 to 3.5 (serious violence), 700;

(ci) in cases falling within bands 4.1. to 4.3 (sexual offences, children), 750;

(di) in cases falling within bands 5.1 to 5.3 (sexual offences, adult), 650;”;

(b) after sub-paragraph (1)(b)(i) insert—

“(ia) in cases falling within bands 7.1 to 7.3 (property damage offences), 550;

(ib) in cases falling within band 8.1 (offences against the public interest, unless standard), 600;”;

(c) after sub-paragraph (1)(b)(ii) insert—

“(iia) in cases falling within band 10.1 (driving offences), 800;

(iib) in cases falling within bands 11.1 and 11.2 (burglary and robbery), 350;

(iic) in cases falling within bands 12.1 to 12.3 (firearms offences), 750;

(iid) in cases falling within band 13.1 (other offences against the person), 750;

(iie) in cases falling within band 14.1 (exploitation/human trafficking offences), 350;

(iif) in cases falling within bands 15.1 to 15.3 (public order offences), 150;

(iig) in cases falling within bands 16.1 to 16.3 (regulatory offences), 300;

(iih) in cases falling within band 17.1 (standard cases), 100;”.

(11) After paragraph 17 insert—

“Fees for consideration of unused material

17A.—(1) This paragraph applies in respect of any case on indictment in the Crown Court, in respect of which a graduated fee is payable under Part 2 or Part 3, other than a guilty plea.

(2) In any case to which this paragraph applies, a fee (“the basic consideration fee”) is payable to a trial advocate in respect of the consideration of unused material which corresponds to the category of the advocate concerned specified in the table following this sub-paragraph, whether or not such consideration has actually occurred.

| Category of advocate | Fee |
|----------------------------|---------|
| QC | £112.11 |
| Leading Junior | £84.84 |
| Junior alone or Led Junior | £59.01 |

(3) This sub-paragraph applies where—

- (a) a trial advocate has undertaken the consideration of unused material; and
- (b) the advocate has spent in excess of three hours undertaking that consideration.

(4) In a case where sub-paragraph (3) applies—

- (a) a fee (“the additional fee”) is payable to the trial advocate in addition to the basic consideration fee; and
- (b) the amount of the additional fee corresponds to the category of the advocate concerned specified in the table following paragraph 24.

(5) The additional fee is payable only where the appropriate officer considers it reasonable to make such a payment.

(6) A trial advocate claiming the additional fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(7) In determining whether it is reasonable to pay the additional fee, the appropriate officer must take into account—

- (a) the reasonableness of the hours claimed in respect of the case taken as a whole; and
- (b) the reasonableness of the hours claimed in respect of the consideration of the unused material.”.

(12) In paragraph 19(2) (fees for conferences and views), for “paragraph 8” substitute “paragraph 7”.

(13) In paragraph 19A(2) (fees for further case management hearings and plea and trial preparation hearings), for “paragraph 8” substitute “paragraph 7”.

(14) In paragraph 22 (discontinuance or dismissal of proceedings)—

- (a) in sub-paragraph (2), for “paragraph 8” substitute “paragraph 7”;
- (b) in sub-paragraph (3), for “graduated fee calculated in accordance with paragraph 7” substitute “fee calculated in accordance with paragraph 7(a)”;
- (c) in sub-paragraph (5), for a “graduated fee calculated in accordance with paragraph 7”, substitute “fee calculated in accordance with paragraph 7(a)”;
- (d) in sub-paragraph (7), for “graduated fee calculated in accordance with paragraph 7”, substitute “fee calculated in accordance with paragraph 7(a)”;
- (e) in sub-paragraph (8)(b), for “paragraph 8” substitute “paragraph 7”.

(15) In the table that follows paragraph 24 (fixed fees), after the entry relating to “special preparation” insert—

| | | | | |
|----------------|--------|-----------------|-----------------|-----------------|
| “Consideration | 17A(3) | £39.39 per hour | £56.56 per hour | £74.74 per hour |
|----------------|--------|-----------------|-----------------|-----------------|

of unused
material in
excess of three
hours

”.

- (16) In paragraph 24A(2) (warrant for arrest), for “paragraph 8” substitute “paragraph 7”.
- (17) In paragraph 27 (additional charges and additional cases)—
- (a) in sub-paragraph (2)(b)(i), for “paragraph 8” substitute “paragraph 7”;
 - (b) in sub-paragraph (4)(a), for “paragraph 8” substitute “paragraph 7”.
- (18) In paragraph 31 (assisted person unfit to plead or stand trial)—
- (a) in sub-paragraph (b)(ii), for “graduated fee calculated in accordance with paragraph 7” substitute “fee calculated in accordance with paragraph 7(b)”;
 - (b) in sub-paragraph (c)(ii), “graduated fee calculated in accordance with paragraph 7” substitute “fee calculated in accordance with paragraph 7(a)”.

Amendment of Schedule 2

5.—(1) Schedule 2 (litigators’ graduated fee scheme) is amended as follows.

(2) In paragraph 1(1), after the definition of “PPE Cut-off” insert—

“;

“unused material” means material disclosed pursuant to the prosecutors’ obligations in Part 1 of the Criminal Procedure and Investigations Act 1996, but does not include—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants”.

(3) After paragraph 20 insert—

“Fees for consideration of unused material

20A.—(1) This paragraph applies in respect of any case on indictment in the Crown Court, in respect of which a graduated fee is payable under Part 2, other than a guilty plea.

(2) In any case to which this paragraph applies, a fee (“the basic consideration fee”) is payable to a litigator in respect of the consideration of unused material which corresponds to the grade of the litigator concerned specified in the table following this sub-paragraph, whether or not such consideration has actually occurred.

| <i>Grade of litigator</i> | <i>Amount of the basic consideration fee for a fee earner whose office is not situated within the City of London or a London Borough</i> | <i>Amount of the basic consideration fee for a fee earner whose office is situated within the City of London or a London Borough</i> |
|---|--|--|
| Senior solicitor | £72.54 | £76.31 |
| Solicitor, legal executive or fee earner of equivalent experience | £61.59 | £64.68 |
| Trainee or fee earner of equivalent experience | £40.73 | £46.55 |

(3) This sub-paragraph applies where—

- (a) a litigator has undertaken the consideration of unused material; and
 - (b) the litigator has spent in excess of three hours undertaking that consideration.
- (4) In a case where sub-paragraph (3) applies—
- (a) a fee (“the additional fee”) is payable to the litigator in addition to the basic consideration fee; and
 - (b) the amount of the additional fee corresponds to the grade of fee earner concerned specified in the table following paragraph 27.
- (5) The additional fee is payable only where the appropriate officer considers it reasonable to make such a payment.
- (6) A litigator claiming the additional fee must supply such information and documents as may be required by the appropriate officer in support of the claim.
- (7) In determining whether it is reasonable to pay the additional fee, the appropriate officer must take into account—
- (a) the reasonableness of the hours claimed in respect of the case taken as a whole; and
 - (b) the reasonableness of the hours claimed in respect of the consideration of the unused material.”.
- (4) In the table in paragraph 27, after the entry relating to “preparation” insert—

| | | | |
|--|---|-----------------|---|
| “Consideration of unused material in excess of 3 hours | Senior solicitor | £48.36 per hour | £50.87 per hour for a fee earner whose office is situated within the City of London or a London Borough |
| | Solicitor, legal executive or fee earner of equivalent experience | £41.06 per hour | £43.12 per hour for a fee earner whose office is situated within the City of London or a London Borough |
| | Trainee or fee earner of equivalent experience | £27.15 per hour | £31.03 per hour for a fee earner whose office is situated within the City of London or a London Borough”. |

Amendment of Schedule 4

6. In Schedule 4 (rates payable for the claims specified in regulation 8), in paragraph 5 (representation in the Magistrates’ Court), at the end insert—

“(6) The fixed fee payable to a litigator in respect of a case sent for trial to the Crown Court is £181.40.”.

Transitional provision

7.—(1) Subject to paragraph (2), the amendments made by these Regulations only apply in relation to a representation order made on or after 17th September 2020.

(2) The amendments made by regulation 3 (omission of regulation 10) and regulation 6 (amendment of Schedule 4) only apply in relation to a representation order made on or after 19th October 2020.

25th August 2020

Robert Buckland
Lord Chancellor
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435; the “2013 Regulations”).

In particular, the Regulations make provision for payments in respect of the consideration of unused material under both the advocates’ graduated fee scheme (as set out in Schedule 1 to the 2013 Regulations) and the litigators’ graduated fee scheme (as set out in Schedule 2 to the 2013 Regulations). Provision is also made in relation to fees payable for special preparation under the advocates’ graduated fee scheme.

The Regulations also amend the advocates’ graduated fees scheme in respect of payments for cases where there is a guilty plea or a cracked trial. They also amend Schedule 4 to the 2013 Regulations to provide the amount of a fixed fee in relation to work undertaken in a case sent from the magistrates’ court to the Crown Court for trial.

Regulation 7 of these Regulations makes transitional provision.

An impact assessment on the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Legal Aid Policy Team, Access to Justice Directorate, Justice and Courts Policy Group, Ministry of Justice, 102 Petty France, London SW1H 9AJ. The impact assessment is annexed to the Explanatory Memorandum which is available alongside these Regulations on the UK legislation website at <http://www.legislation.gov.uk>.

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